

Senate File 2028 - Introduced

SENATE FILE 2028

BY JOCHUM

A BILL FOR

1 An Act relating to the availability of diagnostic and repair
2 information, diagnostic repair tools, and service parts
3 provided by manufacturers of digital electronic products.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 550A.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. *"Authorized repair provider"* means a person who is
5 engaged in the diagnosis, service, maintenance, or repair of a
6 digital electronic product in this state pursuant to an oral
7 or written agreement with the manufacturer of the digital
8 electronic product to provide such services in the name of the
9 manufacturer for a definite or indefinite period of time.

10 2. *"Diagnostic and repair information"* means any information
11 provided to an authorized repair provider by the manufacturer
12 of a digital electronic product for the purposes of diagnosis,
13 service, maintenance, or repair of the digital electronic
14 product. *"Diagnostic and repair information"* includes manuals,
15 diagrams, reporting output, service code descriptions,
16 repair technical updates, diagnostic software, service access
17 passwords, updates and corrections to firmware, and any related
18 information or documentation.

19 3. *"Digital electronic product"* means a part or product
20 containing a microprocessor originally manufactured for
21 distribution and sale in the United States.

22 4. *"Fair and reasonable terms"* means an equitable purchase
23 price for a part or product that takes into account but is not
24 limited to the following factors:

25 a. The net cost to an authorized repair provider to purchase
26 a similar part or product from a manufacturer, excluding any
27 discounts, rebates, or other incentive programs.

28 b. The cost to a manufacturer to prepare and distribute
29 the part or product, excluding any research and development
30 costs incurred from the design, implementation, upgrade, or
31 alteration of the part or product, but including amortized
32 capital costs for the preparation and distribution of the part
33 or product.

34 c. The purchase price charged by other manufacturers for a
35 similar part or product.

1 5. "*Independent repair provider*" means a person who is
2 engaged in the diagnosis, service, maintenance, or repair of
3 a digital electronic product in this state not pursuant to a
4 written or oral agreement with the manufacturer of the digital
5 electronic product to provide such services in the name of the
6 manufacturer.

7 6. "*Manufacturer*" means a person who, in the ordinary course
8 of business, is engaged in the selling or leasing of a digital
9 electronic product to consumers in this state and is engaged in
10 the diagnosis, service, maintenance, or repair of that digital
11 electronic product.

12 7. "*Owner*" means a person who lawfully acquires a digital
13 electronic product purchased or used in this state.

14 8. "*Person*" means the same as defined in section 4.1.

15 9. "*Service part*" means a replacement part for a digital
16 electronic product, either new or used, made available to an
17 authorized repair provider by the manufacturer to repair the
18 digital electronic product.

19 10. "*Trade secret*" means the same as defined in section
20 550.2.

21 Sec. 2. NEW SECTION. 550A.2 **Manufacturer requirements —**
22 **prohibitions — limitations.**

23 1. A manufacturer shall do all of the following:

24 a. Make diagnostic and repair information that is provided
25 to an authorized repair provider available to an independent
26 repair provider or owner in the same manner that such
27 information is provided to the authorized repair provider and
28 without any additional charge.

29 b. Make a service part that is provided to an authorized
30 repair provider available for purchase by an independent repair
31 provider or owner upon fair and reasonable terms. However, the
32 manufacturer need not make accessible for purchase any service
33 part no longer available to the manufacturer or the authorized
34 repair provider.

35 c. Make a diagnostic repair tool that incorporates the same

1 diagnostic repair capabilities made available to an authorized
2 repair provider available for purchase by an independent repair
3 provider or owner upon fair and reasonable terms.

4 2. A manufacturer that sells diagnostic and repair
5 information to an independent repair provider or owner in a
6 format that is standardized with other manufacturers shall
7 not require an authorized repair provider to purchase such
8 information in a proprietary format, unless the proprietary
9 format includes information that is not available in a
10 standardized format.

11 3. A manufacturer of a digital electronic product used for
12 the purpose of providing security-related functions shall not
13 exclude diagnostic and repair information that is necessary
14 to reset a security-related electronic function from the
15 information provided to an independent repair provider or
16 owner. If necessary for security purposes, a manufacturer may
17 provide such information through a secure data release system.

18 4. A manufacturer that provides diagnostic and repair
19 information relating to a digital electronic product to a
20 third-party publication or service information system shall
21 be deemed to be in compliance with the requirements of this
22 section with respect to the digital electronic product.

23 5. Nothing in this section shall be construed to do any of
24 the following:

25 a. Require a manufacturer to divulge information entitled to
26 protection as a trade secret.

27 b. Interfere with, contradict, or alter the terms of an
28 agreement executed between a manufacturer and an authorized
29 repair provider.

30 c. Require a manufacturer or authorized repair provider
31 to provide access to nondiagnostic or nonrepair information
32 provided by a manufacturer to an authorized repair provider
33 pursuant to the terms of an agreement executed between the
34 manufacturer and authorized repair provider.

35 Sec. 3. NEW SECTION. 550A.3 Notice of violation — right to

1 cure — private right of action — attorney general intervention.

2 1. An independent repair provider or owner who believes
3 that a manufacturer has violated this chapter shall notify the
4 manufacturer of the alleged violation in writing. Such notice
5 shall include a description of the alleged violation.

6 2. Upon receipt of notice of an alleged violation, a
7 manufacturer shall respond in writing and shall have a right to
8 cure the alleged violation within thirty days of receiving such
9 notice.

10 3. Either party may file an action concerning an alleged
11 violation of this chapter in the district court for the county
12 in which the violation is alleged to have occurred.

13 4. Upon timely application to the court in which an action
14 involving a violation of this chapter is pending, the attorney
15 general may intervene as a party at any time or may be heard at
16 any time. The attorney general's failure to intervene shall
17 not preclude the attorney general from bringing a separate
18 action.

19 EXPLANATION

20 The inclusion of this explanation does not constitute agreement with
21 the explanation's substance by the members of the general assembly.

22 This bill requires manufacturers of digital electronic
23 products that are sold or used in Iowa to make available
24 diagnostic and repair information, diagnostic repair tools, and
25 service parts.

26 The bill contains several definitions. The bill includes
27 definitions for "authorized repair provider", "diagnostic
28 and repair information", "digital electronic product",
29 "fair and reasonable terms", "independent repair provider",
30 "manufacturer", "owner", "person", "service part", and "trade
31 secret".

32 The bill requires a manufacturer to make diagnostic and
33 repair information that is provided to authorized repair
34 providers available to independent repair providers and owners
35 in the same manner and without any additional charge. A

1 manufacturer must make service parts and diagnostic repair
2 tools provided to authorized repair providers available for
3 purchase by independent repair providers or owners upon fair
4 and reasonable terms, as defined in the bill.

5 The bill prohibits a manufacturer that sells diagnostic and
6 repair information in a standardized format from requiring its
7 authorized repair providers to purchase such information in
8 a proprietary format, unless necessary. A manufacturer of a
9 digital electronic product used for security-related functions
10 is prohibited from excluding certain diagnostic and repair
11 information from the information provided to independent repair
12 providers or owners.

13 The bill specifies that a manufacturer that provides
14 diagnostic and repair information to a third-party publication
15 or service information system regarding a digital electronic
16 product is deemed to be in compliance with the bill's
17 requirements with respect to that product.

18 The bill provides that nothing in the bill shall be construed
19 to require manufacturers to divulge trade secrets, interfere
20 with or alter the terms of existing agreements between
21 manufacturers and authorized repair providers, or require
22 manufacturers or authorized repair providers to provide access
23 to nondiagnostic or nonrepair information.

24 The bill provides that an independent repair provider
25 or owner who believes that a manufacturer has violated the
26 bill shall notify the manufacturer of the alleged violation
27 in writing, which must include a description of the alleged
28 violation. A manufacturer must respond to a notice of
29 an alleged violation in writing and may cure such alleged
30 violation within 30 days of receiving the notice. Either party
31 may file an action concerning an alleged violation of the bill
32 in the district court for the county in which the violation is
33 alleged to have occurred. The attorney general may intervene
34 as a party in an action brought pursuant to the bill upon
35 timely application to the court in which the action is pending.

1 The attorney general's failure to intervene does not preclude
2 the attorney general from bringing a separate action.